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**IN THE
COURT OF APPEALS OF INDIANA**

PAMELA GOMEZ,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

No. 64A03-0703-CR-142

APPEAL FROM THE PORTER SUPERIOR COURT

The Honorable Roger V. Bradford, Judge

Cause No. 64D01-0509-FC-8100

August 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Pamela Gomez appeals her sentence of eighteen years in the Department of Correction, which was imposed after Gomez pleaded guilty to three counts of operating a vehicle while intoxicated causing serious bodily injury as class C felonies¹ and agreed that she was an habitual offender.² Gomez presents one issue on appeal, which we revise and restate as whether her sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

On March 29, 2005, Gomez had some drinks with her neighbors, when her husband called her and told her that they were going out to dinner. Gomez got into the car, along with her two children, and drove toward her mother-in-law's house to drop off the children. While on her way, Gomez drove into oncoming traffic and hit a vehicle driven by Matthew Westphal, causing injuries to everyone in both vehicles. One of Gomez's daughters suffered from lacerations to her face and a liver contusion. Gomez's other daughter had lacerations and a broken shoulder and femur, which required surgery. Westphal had complex facial fractures and a fractured tibia and fibula. Westphal received five plates and sixty-four screws in his face and had three surgeries to try to correct the damage to his leg. Westphal's physician informed him that, by the age of thirty, he would need to have his leg amputated. Because neither Westphal nor Gomez had insurance at the time of the accident, Westphal had to file bankruptcy and lost both his job and his apartment. Gomez suffered injuries to her chest, knees and head during the accident and had to have "drills in [her] head" and "rods, screws and plates" in her

¹ Ind. Code § 9-30-5-4 (2004).

² Ind. Code § 35-50-2-8 (2004) (subsequently amended by Pub. L. No. 71-2005, § 11 (eff. April 25, 2005)).

knee. Appellant's Appendix at 49. Gomez's blood alcohol level was tested at the hospital, and "the result of her blood test for alcohol was .18 serum[,] which converts to about the equivalent of .15 whole blood." Appellant's Appendix at 75.

On September 20, 2005, the State filed a twenty-six count information against Gomez. On May 8, 2006, Gomez pleaded guilty to three counts of operating a vehicle while intoxicated causing serious bodily injury as class C felonies and being an habitual offender. A presentence investigation was conducted, and the probation department recommended a sentence of eight years for the class C felonies and eight years for being an habitual offender.³ A sentencing hearing was held on December 14, 2006, and the trial court sentenced Gomez to concurrent eight-year sentences for each count of

³ Gomez included a copy of the presentence investigation report on white paper in her appendix. See Appellant's Appendix at 37-51. We remind Gomez that Ind. Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Ind. Administrative Rule 9(G)(1)(b)(viii) states that "[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the pre-sentence investigation report printed on white paper in her appellant's appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:

Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:

- (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential."
- (2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not for Public Access" or "Confidential" and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

operating a vehicle while intoxicated causing serious bodily injury, enhanced by ten years for her status as an habitual offender, for a total of eighteen years executed.

The sole issue is whether Gomez's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that "the court may revise a sentence . . . if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that while intoxicated Gomez caused a significant collision that caused significant damage. Westphal had to have his face held together by five plates and sixty-four screws. He also had several surgeries to fix his leg, none of which were completely successful. Westphal will likely lose his leg by the age of thirty. Westphal also had to file for bankruptcy, lost his job, and had to move home with his parents. Westphal's parents had to take weeks off of work to take care of their son. Westphal and his family have suffered greatly from the serious injuries that he sustained.⁴ Gomez also severely injured her own children and betrayed their trust. Moreover, Gomez's own children have suffered from not only their injuries but

⁴ Gomez argues that the trial court improperly used Westphal's injuries, that were significantly greater than necessary to meet the elements of the crime, as an aggravator. However, it is not improper for a trial court to consider such injuries as aggravators. See Patterson v. State, 846 N.E.2d 723, 729 (Ind. Ct. App. 2006) (holding that "even when serious bodily injury is an element of the crime charged, the severity of the injury may serve as a valid aggravating circumstance").

from the loss of their mother. Many people were affected by the collision that Gomez caused.

Our review of the character of the offender reveals that Gomez has a history of criminal activity. She has had an adult record since 1979. Her record includes convictions for failure to maintain insurance, driving while suspended, neglect of a dependent, driving while intoxicated, theft, check deception, invasion of privacy, conversion, and residential entry. Gomez has been placed on probation a number of times and has admittedly violated probation five times. Gomez had charges of possession of cocaine, resisting law enforcement, and being an habitual offender pending when she was arrested for the current offenses. Gomez has an extensive criminal history. Her continuous poor judgment has not only adversely affected the lives of her own children, but innocent drivers and their families as well. Gomez has had numerous chances to change her behavior, yet she has chosen not to do so.

After due consideration of the decision of the trial court, given the extent of the injuries that the victims sustained and Gomez's extensive criminal history, we cannot say that Gomez's sentence of eighteen years in the Department of Correction is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Patterson, 846 N.E.2d at 731 (holding that defendant's sentence was not inappropriate given the victim's injuries and defendant's criminal history).

For the foregoing reasons, we affirm Gomez's eighteen-year sentence.

Affirmed.

MAY, J. and BAILEY, J. concur